

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

The STATES of TENNESSEE and LOUISIANA      )  
*ex rel.* GREGORY FOLSE,                      )  
    )  
Plaintiffs,    )  
    )  
    ) Civil Action No. 3:17-cv-01478  
v.    ) JUDGE TRAUGER  
    )  
MARQUIS "MARK" NAPPER, JOSHUA      )  
KILGORE, DANIEL BIRD, CARE SERVICES    )  
MANAGEMENT LLC, MARQUIS HEALTH      )  
SYSTEMS LLC, MARQUIS MOBILE DENTAL    )  
SERVICES LLC, and SALLY B DALY DDS    )  
LLC d/b/a FLEUR DE LIS MOBILE DENTAL,    )  
    )  
Defendants.    )

**DEFENDANTS' MOTION FOR JOINDER OR, IN THE ALTERNATIVE,  
TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(7)**

Come now, Defendants, by and through the undersigned counsel, and for their Motion for Joinder pursuant to Fed. R. Civ. P. 19, Or, In the Alternative, to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(7), state as follows:

1. The States of Tennessee and Louisiana have accused Defendants of conspiring with over two hundred (200) long term care facilities ("LTC's") in Tennessee alone, along with various medical providers, to commit fraud against those states. The business arrangement between Defendants, the LTC's and medical providers has been successful for over fourteen (14) years, has provided substantial benefits to the LTC's and providers, and has assisted the LTC's in fulfilling their legal obligations under both federal and state Medicaid laws. Despite these benefits, *which Plaintiffs expressly admit*, Plaintiffs alleges that the business arrangement somehow constitutes a conspiracy among Defendants, the LTC's and the medical providers. Although Plaintiffs alleges a conspiracy, Plaintiffs have inexplicably declined to name the LTC's as defendants.

2. Pursuant to Fed. R. Civ. P. 19(a)(1): “[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person’s absence the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.”

3. Defendants respectfully insist that the entire complaint is frivolous, without the slightest support, and pursued by a relator with strong financial incentives, as he is a direct competitor to the Defendants. Defendants are concurrently filing a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

4. If this Court grants Defendants’ motion to dismiss, this Motion for Joinder will become moot.

5. In the event this Court denies the motion to dismiss, Defendants move this Court for an order granting joinder, finding that the LTC facilities are necessary parties, and ordering that they be joined as defendants. Alternatively, Defendants move this Court for an order dismissing this matter in its entirety pursuant to Fed. R. Civ. P. 12(b)(7).

6. The LTC facilities in Tennessee have a significant interest in this matter, and are so situated that disposing of this case in their absence would impair or impede their ability to protect their interest, and would potentially subject the existing parties to immediate liability.

7. Without the presence of the LTC facilities, the Court will not be able to accord complete relief among the parties and will create the possibility of inconsistent outcomes.

8. Defendants are filing a Memorandum in Support of the Motion concurrently herewith.

WHEREFORE, Defendants pray that if this Court denies their concurrent motion to dismiss, this Court grant this Motion for Joinder and require Plaintiffs to name and serve the individual Long Term Care facilities in the state of Tennessee as defendants in this matter, or in the alternative, dismiss this matter in its entirety pursuant to Fed. R. Civ. P. 12(b)(7).

Respectfully submitted,

THE BLACKBURN FIRM, PLLC

/s/ W. Gary Blackburn  
W. Gary Blackburn (#3484)  
Bryant Kroll (#33394)  
213 Fifth Avenue North, Suite 300  
Nashville, TN 37219  
P: (615) 254-7770  
F: (866) 895-7272  
gblackburn@wgaryblackburn.com  
bkroll@wgaryblackburn.com  
*Attorneys for Defendants Mark Napper,  
Joshua Kilgore, Daniel Bird, CSM, LLC,  
Marquis Health Systems, LLC, and  
Marquis Mobile Dental Services, LLC,*

#### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served upon the following via this Court's electronic CM/ECF filing system:

Mark Wildasin  
Civil Chief  
United States Attorney's Office  
Middle District of Tennessee  
110 9th Avenue South, Suite A-961  
Nashville, Tennessee 37203-3870  
(615) 736-5151

Sara E. Vann  
Assistant Attorney General  
Medicaid Fraud Division  
Georgia Department of Law  
200 Piedmont Avenue, S.E.  
West Tower, 19th Floor  
Atlanta, Georgia 30334

[Mark.Wildasin@usdoj.gov](mailto:Mark.Wildasin@usdoj.gov)  
*Attorney for the United States of America*

Nicholas J. Diez  
Assistant Attorney General  
Louisiana Department of Justice  
P.O. Box 94005  
Baton Rouge, Louisiana 70804  
[DiezN@ag.louisiana.gov](mailto:DiezN@ag.louisiana.gov)  
*Attorney for the State of Louisiana*

Erika A. Kelton  
Luke J. Diamond  
PHILLIPS & COHEN LLP  
2000 Massachusetts Avenue, NW  
Washington, DC 20036  
(202) 833-4567  
[EKelton@phillipsandcohen.com](mailto:EKelton@phillipsandcohen.com)  
[LDiamond@phillipsandcohen.com](mailto:LDiamond@phillipsandcohen.com)  
*Attorneys for Relator Gregory Folsom*

Philip Bangle (#31636)  
Scott Corley (#37235)  
Tessa Ortiz-Marsh (#36297)  
Assistant Attorneys General  
Medicaid Fraud & Integrity Division  
Office of the Tennessee Attorney General  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-3491  
[Philip.Bangle@ag.tn.gov](mailto:Philip.Bangle@ag.tn.gov)  
[Scott.Corley@ag.tn.gov](mailto:Scott.Corley@ag.tn.gov)  
[Tessa.Ortiz-Marsh@ag.tn.gov](mailto:Tessa.Ortiz-Marsh@ag.tn.gov)  
*Attorneys for the State of Tennessee*

This 1st day of April, 2021.

(404) 656-4998  
[SVann@law.ga.gov](mailto:SVann@law.ga.gov)  
*Attorney for the State of Georgia*

Michael Hamilton  
Provost-Umphrey Law Firm, LLP  
4205 Hillsboro Pike, Suite 303  
Nashville, Tennessee 37215  
(615) 297-1932  
[MHamilton@pulf.com](mailto:MHamilton@pulf.com)  
*Attorney for Relator Gregory Folsom*

Kimberly M. Bolton  
Assistant Attorney General  
Office of the Attorney General  
Commonwealth of Virginia  
202 North Ninth Street  
(804) 786-2071  
Richmond, Virginia 23219  
[KBolton@oag.state.va.us](mailto:KBolton@oag.state.va.us)  
*Attorney for the Commonwealth of Virginia*

/s/ W. Gary Blackburn  
W. Gary Blackburn